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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25  
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent  
Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593**

Dear Ms. Dortch:

In prior submissions in this docket, the National Cable & Telecommunications Association (NCTA) and its member companies have expressed concern that a mandatory data request could result in significant burdens for cable operators that compete in the marketplace for high-capacity dedicated services and that it could cover data that cable operators consider to be of the utmost commercial sensitivity.<sup>1</sup> Although we appreciate the Commission's effort to develop an accurate assessment of the marketplace, we have explained that cable operators are new entrants in this marketplace, that they have not been subject to reporting or recordkeeping requirements associated with these services, and that it may be difficult or impossible to produce certain information of interest to the Commission because it is not maintained in the normal course of business or would require costly processing to submit in the requested format.<sup>2</sup>

Consistent with our prior advocacy, in this letter we provide additional information regarding potential complications that cable operators may face in responding to a mandatory

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<sup>1</sup> See Letter from Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Aug. 30, 2012); *see also* Letter from Grace E. Koh, Cox Enterprises, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Oct. 2, 2012); Letter from Mary McManus, Comcast, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Sept. 11, 2012).

<sup>2</sup> NCTA agrees with the American Cable Association that these burdens may be particularly significant for smaller cable operators, who already are overwhelmed with reporting and disclosure obligations imposed by the Commission. *See* Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Sept. 24, 2012).

data request in this proceeding. In particular, based on a review of the two previous voluntary data requests released by the Commission in this docket, we have the following concerns:

1. **Future deployment plans.** As NCTA first explained over three years ago,<sup>3</sup> there is no meaningful way for companies to provide information on future deployment plans. The decision to enter (or not enter) a particular location is based on a variety of factors and cannot be reduced to a simple formula. Rather than compiling highly detailed company data on speculative future plans, the Commission should conduct a thorough analysis of the correlation between locations where competitors have actually built and where business customers are located. As suggested in the Commission's order suspending the collocation-based triggers,<sup>4</sup> such an approach could provide meaningful information on where additional competition is likely to arise.
2. **V&H Coordinates/Maps for commercial buildings.** Most cable operators do not keep latitude and longitude data (i.e., V&H coordinates) for the locations of customers of high-capacity non-switched services or the CLLI code for the incumbent LEC wire center in which the customer is located. Therefore, a requirement to compile and report this information could impose significant costs and burdens on cable operators. For example, many companies would have to retain a third party to acquire the V&H coordinates simply to respond to the Commission's data request. Rather than impose this additional regulatory cost on competitive providers, the Commission should instead allow respondents to submit street addresses of served locations. Along the same lines, requiring companies to create maps that show the links to each and every location served, rather than relying on a list of street addresses, also would be tremendously burdensome. The Commission recently has demonstrated the capability to generate maps in other contexts (e.g., broadband deployment, Mobility Fund, CAF Phase I), so it should be able to rely on street addresses submitted by cable operators to create special access maps, if necessary.
3. **Mandatory market designations.** Some companies do not keep data by Metropolitan Statistical Area (MSA) or county or any similar designation but instead group areas based on their cable-specific historical service areas (often based on the nearest urban area). The task of organizing customer data according to mandatory market designations could be extremely burdensome. Rather than mandating submission of data organized on the

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<sup>3</sup> See Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed June 30, 2009) ("These are capital-intensive, high-risk investments and decisions regarding where and when to make such investments are not simple. Consequently, as NCTA explained in a prior ex parte letter, providing data regarding where facilities might be deployed in the future is substantially more complicated than providing data regarding locations where facilities exist today."); see also Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed May 8, 2009).

<sup>4</sup> *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, FCC 12-92 at ¶ 51 (rel. Aug. 22, 2012) ("[R]eporting carriers had a greater tendency to offer competition in ZIP codes with business establishment density greater than 100 establishments per square mile than they did in ZIP codes with lower establishment densities.").

basis of MSAs, we would encourage the Commission to permit companies to submit customer data based on five-digit zip codes (not nine-digit zip codes), which cable operators are more likely to include in their customer records.

4. **Strand/Circuit-Level Detail.** One of the great advantages of fiber optic technology is that the level of service provided to a customer over a single fiber easily can be adjusted by updating the attached electronics. As a result, some of the detail the Commission has previously requested regarding the number of strands of fiber to a particular location, the capacity of the service to a location, or the type of control exercised over a particular fiber (ownership vs. indefeasible right of use) is largely irrelevant. The relevant information for purposes of determining whether the special access market is subject to competition in a given market is whether there is a fiber-based alternative to the incumbent LEC's offering, not the current transmission capacity of that competing facility. The burden imposed on cable operators of providing additional detail regarding the number of fibers and capacity, which often is not maintained in an easily accessible manner, outweighs the usefulness of the information to the Commission.
5. **2010 data.** Many cable operators may not have kept data regarding their dedicated high-capacity services in 2010 and even those companies that have some data are unlikely to possess all the data requested by the Commission. Given that 2010 data will tell the Commission nothing about the current state of the marketplace, we would strongly encourage the Commission not to ask for 2010 data or, at a minimum, to make clear that companies need not devote significant resources to recreating three-year old data. We note that incumbent LECs have stated that they also will have difficulty providing historical data.<sup>5</sup>
6. **Revenue and Pricing Data.** Any mandatory requirement to provide revenue and pricing data would raise a number of concerns. Given the highly sensitive nature of such data, the Commission only should consider mandating its submission if it is essential to the Commission's analysis. But the focus of this proceeding has always been the prices charged by incumbent LECs, not by competitive providers. With respect to competitors, the primary focus of the proceeding (and of the mandatory data request) should be identifying which areas of the country have competitive alternatives for dedicated high-capacity services and which areas do not. Collecting detailed information on the pricing of competitive services or the revenues generated by those services will not help the Commission identify where there are competitive alternatives and therefore such data should not be collected.

In addition to items previously requested by the Commission, we note that AT&T and Verizon have submitted their own suggestions of information they consider essential to the data collection process. Almost without exception, the items requested by these two companies, such as identifying every RFP that a company has responded to or every building access dispute it has

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<sup>5</sup> See, e.g., Letter from Maggie McCreedy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Oct. 2, 2012) (Verizon Oct. 2 *Ex Parte* Letter).

had,<sup>6</sup> would be both tremendously burdensome for competitors to produce and of limited value in the Commission's analysis. In fact, AT&T and Verizon would have the Commission compel unregulated competitive providers to provide more information regarding future service deployments (information that is both speculative and highly sensitive in competitive markets) than incumbent LECs are required to provide when they receive millions of dollars in consumer-funded universal service support to build broadband networks in unserved areas.<sup>7</sup> Given AT&T and Verizon's consistent calls for reducing or eliminating data collection and recordkeeping requirements for themselves,<sup>8</sup> their current attempts to impose highly burdensome reporting requirements on their competitors should be rejected.

As we have stated previously, the cable industry fully supports the Commission's efforts to gather the data necessary to make decisions about where and when to regulate (or deregulate) incumbent LEC special access services. However, imposing overly burdensome regulatory requirements on competitive companies that have deployed (and continue to deploy) IP-based fiber networks is inconsistent with the Commission's efforts to encourage such deployment. The Commission should be "finding additional regulatory underbrush to clear out of the way of competitive markets,"<sup>9</sup> rather than planting the seeds for burdensome new regulation of

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<sup>6</sup> See, e.g., Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 05-25 (filed July 31, 2012) (competitors should provide details regarding every RFP they have responded to); Letter from Robert W. Quinn, Jr., AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Sept. 4, 2012) (competitors should identify every impediment they have faced in accessing a building or public right-of-way).

<sup>7</sup> Compare Verizon Oct. 2 *Ex Parte* Letter at 2 (urging the Commission to require competitive providers to "[p]rovide data or maps that show the geographic area where you or your affiliate offers or plans to offer retail or wholesale high-capacity services, whether wireline or wireless, within the next two years.") with *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, 27 FCC Rcd 8141, 8143, ¶ 5 (Wireline Comp. Bur. 2012) (clarifying that, rather than requiring incumbent LECs to deploy broadband to identified locations, they may use universal service Connect America Fund Phase I support to "deploy to eligible locations not identified in their notices of acceptance").

<sup>8</sup> See, e.g., Letter from Robert W. Quinn, Jr., AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, *et al.* at 2 (filed Aug. 30, 2012) (requesting elimination of all recordkeeping, accounting and data collection for TDM-based services); Petition of USTelecom for Forbearance Under 47 U.S.C. 160(c) From Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012) (seeking elimination of accounting and ARMIS reporting rules).

<sup>9</sup> Statement of Commissioner Robert M. McDowell, Petition for Declaratory Ruling to Clarify 47 U.S.C. § 572 in the Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket No. 11-118 (Sept. 17, 2012); see also Opening Remarks of Commissioner Ajit Pai, at the Telecommunications and E-Commerce Roundtable of the U.S. Chamber of Commerce (Sept. 14, 2012) ("First, in order to promote job creation and economic growth, I believe that the FCC needs to remove barriers to infrastructure investment. . . . [W]e badly need additional investment in this area. Studies estimate that every billion dollars the private sector spends on fiber deployment creates between 15,000 and 20,000 new jobs.").

competitive providers. Accordingly, we strongly encourage the Commission to carry out the data collection process in a manner that minimizes the burden on respondents so they can devote their resources to additional investment in facilities.

Respectfully submitted,

**/s/ Steven Morris**

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